BANK KERJASAMA RAKYAT (M) BHD.

v.

MESSRS. BEAU VEST (M) SDN. BHD.

HIGH COURT MALAYA, IPOH
ABDUL MALEK AHMAD J
[ORIGINATING SUMMONS NO. 31-1900-86]
9 OCTOBER 1989

CIVIL PROCEDURE: *Order 83 - Order for sale - Objections by chargor - Notice of demand for balance due - Form 16D National Land Code 1965 - Principal amount and interest payable - Allegation of erroneous interest - Order 83 rr. 3(3), 3(6) Rules of the High Court 1980 - Negotiations for settlement - Effect thereof on technical objections.*

In this matter the chargor objected to the application for an order for sale. The complaint was that the notice of demand was only in respect of arrears and not for the whole of the principal amount and interest thereon. Therefore, there was no demand before the notice of default. Also, it was alleged that payments made after notice of demand were not taken into consideration. The chargor also complained that interest was erroneous as it was compounded. There was evidence of negotiations for a settlement in that the chargor had found a purchaser to buy the charged property, to which the applicant/chargee disagreed. Further, the chargee refused to restructure the loan. The chargee/applicant filed affidavits in compliance with O. 83 rr. 3(3) and 3(6) Rules of the High Court 1980.

Held:

[1] The notice of demand was valid as the charge agreement clearly provides for the whole of the principal amount under the loan and interest to be due and immediately repayable on demand, for repayment of the loan or any part thereof.

[2] Payments made after notice of demand were duly accounted for in the finalised accounts and the chargors have not been misled/prejudiced in any way.

[3] The amounts outstanding and interest have to be accepted as correct as per the affidavits filed by the chargee/applicants in view of O. 83 rr. 3(3) and 3(6) Rules of the High Court 1980.

[4] The evidence of negotiations for a settlement, finding of a purchaser by the chargor and request for restructuring of the loan wipes out the technicalities raised by the chargors.

[Order in Terms of Chargees Application, Auction date fixed accordingly.]

Legislation referred to:
National Land Code 1965, Form 16D
Rules of the High Court 1980, O. 83 rr. 3(3), (6)

For the applicants/chargees - Awtar Singh; M/s. Faisal Azian & Co.
For the respondents/chargors - Romesh Roy; M/s. W.Y. Chan & Roy

JUDGMENT

Abdul Malek J:

The applicants/chargees had applied for an order for sale of the land charged by the respondents/chargors in consequence of the debt due under the business loan amounting to RM4,523,643.92 sen as at 31 August 1986 together with interest at the rate of 15% per annum with effect from 1 September 1986.

The notice under Form 16D of the National Land Code had been served on the respondents/chargors on 10 September 1986 after the notice of demand had been sent to them on 20 March 1986 [encl. 9 para. 3 Exhibit A1]. Learned Counsel for the respondents/chargors had submitted that there had been no demand before the notice of default as the relevant demand had only asked for the arrears and not the whole sum. Further, he argued that there had been payment after that notice of demand. I find no merit in this argument as s. 8.01 of the charge clearly provides that "The whole of the principal amount under the said loan and interest thereon ... shall become due and immediately repayable on demand ..." and that "the demand for the repayment of the said loan or the *balance thereof* [Emphasis is mine]...be made by a notice demanding payment within seven (7) days from the date of notice..." It was, therefore, quite in order for the demand to state only the balance then due. Payment after the demand had also been taken into consideration in the finalised accounts and the respondents/chargors were neither misled nor prejudiced in the circumstances.

The second contention of the learned Counsel for the respondents/chargors was that the amount is incorrect because of the erroneous interest calculations by virtue of it being compounded. Again, I have to reject this submission in view of the affidavits filed by the applicants/chargees as to the amounts outstanding on the date of the affidavits which have to be accepted as correct in view of O. 83 rr. 3(3) and 3(6) of the Rules of the High Court 1980 and the evidence of the notice as to the variation of interest.

To my mind, this is only a half-baked desperate attempt by the respondents/chargors to prevent the auction in the circumstances, as is usual in cases of this nature, especially so when there is evidence in the submissions that the respondents/chargors had in fact found a purchaser to buy the property charged but this had not been agreed to by the applicants/chargees which also had not agreed to the restructuring of the loan as requested by the respondents/chargors. The negotiations for a settlement, as evidence by the respondents/chargors' letter dated 26 August 1988 and the applicants/chargees's letter dated 10 September 1988, Exhibited as "A3" and "A2" respectively at encl. 9, only has the effect of wiping out the technicalities raised by the respondents/chargors.

I consequently found that the applicants/chargees had complied with the provisions of the annexure to the charge and that they had correctly made this application under s. 9.01 of that annexure. In the event, I granted the order in terms of their application and fixed the auction date on 23 December 1989.

Also found at [1990] 1 CLJ 249